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## LEGEND

X =

State =

Trust 1 =Trust A =Trust 2 =

Trust B =

Trust 3 =

Trust C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Dear \_\_\_\_\_ :

This letter is in response to your request dated December 27, 2013, on behalf of X seeking relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on Date 1. X made an election to be treated as an S corporation effective Date 2. On Date 3, Trust 1, Trust 2, and Trust 3 (collectively, the Trusts) because shareholders of X. The beneficiaries of Trust 1, Trust 2, and Trust 3 each made elections to treat their respective trusts as qualified subchapter S trusts (QSSTs) effective Date 3. X represents that since Date 3, the Trusts and their respective beneficiaries reported their allocable share of income, gain, loss, and deduction on all affected returns consistent with the treatment of the Trusts as QSSTs.

In Year 1, the shareholders of X agreed to sell their stock in X to an unrelated third party. As part of the buyer's due diligence, the buyer notified X that its S election may have been terminated on Date 3 because the Trusts may not have qualified as QSSTs due to Article VIII contained in each of the Trust Agreements. Article VIII of each of the Trust Agreements, which was not invoked since Date 3 provides:

The following provision shall apply where the context admits:

Upon the death of the survivor of the Grantors, if any of the Trust Estate shall be included in the gross estate of the last to die of the Grantors for Federal Estate Tax purposes, the Trustee shall pay, from such of the Trust Estate so included, as an expense of administration, directly or to my personal representative, without apportionment or reimbursement, estate, inheritance, transfer, succession, legacy and similar taxes (including any interest and penalty) payable because of the death of the survivor of the Grantors, in such amount, if any, as such taxes are increased because of such inclusion.

On Date 4, X and the Trusts took corrective action by having Trust 1 transfer all of its stock in X to Trust A, Trust 2 transfer all of its stock in X to Trust B, and Trust 3 transfer all of its stock in X to Trust C. X represents that Trust A, Trust B, and Trust C are eligible to be treated as QSSTs. The beneficiary of Trust 1 is the beneficiary of Trust A, the beneficiary of Trust 2 is the beneficiary of Trust B, and the beneficiary of Trust 3 is the beneficiary of Trust C. The beneficiaries of Trust A, Trust B, and Trust C, respectively, have timely filed elections to treat their respective trusts as qualified subchapter S trusts (QSSTs) effective Date 4.

X states that neither it nor its shareholders intended to terminate the S corporation status as a result of the transfer of stock to the Trusts. It also represents that the circumstances causing the possible termination of the S election were inadvertent and not the result of retroactive tax planning or tax avoidance. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1361(a) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation to which an election under § 1362(a) is in effect for such year.

Section 1362(a)(1) provides, in general, that except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(b)(1) provides that the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(B)(i) provides that for purposes of § 1361(b)(1), in the case of a trust described in § 1361(c)(2)(A)(i), the deemed owner shall be treated as the shareholder.

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2), such trust shall be treated as a trust described in § 1361(c)(A)(i) and, for purposes of § 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under §1361(d)(2) is made.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations provides that the current income beneficiary of the trust must make the QSST election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax

return the applicable form or statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1.1361-1(j)(6)(iii) provides that, if S corporation stock is transferred to a trust, the QSST election must be made within the 16-day-and-2-month period beginning on the day the stock is transferred to the trust. If a C corporation has made an election under § 1362(a) to be an S corporation (S election) and, before that corporation's S election is in effect, stock of that corporation is transferred to a trust, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust.

Section 1361(d)(1) provides, in general, that in the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under paragraph (2), (A) such trust shall be treated as a trust described in subsection (c)(2)(A)(i), (B) for purposes of § 678(a), beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph (2) is made, and (C) for purposes of applying §§ 465 and 469 to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.

Section 1361(d)(3) provides that the term "qualified subchapter S Trust" means a trust (A) the terms of which require that (i) during the life of the current income beneficiary there shall be only 1 income beneficiary, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for a taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1362(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of § 1362(d); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable amount of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents; and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to making such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the

corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and the representations made, we conclude that X's S corporation election may have terminated as of Date 3 because Trust 1, Trust 2, and Trust 3 were ineligible shareholders because pursuant to Article VIII, the corpus of the trust could have been paid to someone other than the current income beneficiary during the life of that beneficiary. We further conclude that if X's S corporation election was terminated on Date 3, such termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation as of Date 2 and thereafter, provided that (1) the beneficiaries of Trust A, Trust B, and Trust C, respectively, each file a QSST election in the time and manner provided in § 1.1361-1(j)(6), and (2) X's S corporation election is not otherwise terminated under § 1362(d).

Except as specifically ruled upon above, no opinion is expressed as to the federal income tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed or implied as to whether X otherwise qualifies as a subchapter S corporation under § 1361. Furthermore, no opinion is expressed or implied as to the Federal income tax, estate tax, gift tax, or generation skipping tax consequences of the transfer of X shares from Trust 1 to Trust A, Trust 2 to Trust B, or Trust 3 to Trust C.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and are accompanied by a perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter ruling will be sent to the taxpayer's representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure (1)

Copy of Letter for § 6110 purposes